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IN THE

Supreme Court of the United States

October Term, 1965

No. 358

In the Matter of

the claim for Compensation under the Workmen's Compensation Law made by WALTER E. BRAADT,

Appellant,

vs:

THE CITY OF NEW YORK, DEPARTMENT OF SANITATION (Self-insurer),

Appellee,

WORKMEN'S COMPENSATION BOARD,

Appellee.

(W. C. B. No. 05994124)

MOTION TO DISMISS

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MOTION TO DISMISS

Appellee The City of New York moves, pursuant to Rule 16(1)(b) of the Revised Rules of this Court, to dismiss this appeal from the final order and judgment of the New York Court of Appeals which affirmed an order of the Appellate Division of the New York Supreme Court, Third Department, affirming a decision of the Workmen's Compensation Board of the State of New York which denied the claimant-appellant's application to vacate awards of compensation allowed to and received by the claimant.

The notice of appeal states that the appeal is taken pursuant to 28 U. S. C. §1257(2), which authorizes an appeal to this Court from a final judgment of the highest court of a State in which a decision could be had where there "is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The instant motion to dismiss the appeal is based upon the ground that the appeal does not present a substantial constitutional question because the sole question raised by this appeal, the constitutionality of New York Workmen's Compensation Law, §113, was determined by this Court in *South Buffalo R. Co.* v. *Ahern,* 344 U. S. 367 (1953). Reported below: 21 A D 2d 957, 251 N. Y. S. 2d 376; 15 N Y 2d 875, 206 N. E. 2d 349.

Statute Involved

Section 113 of the Workmen's Compensation Law of the State of New York (McKinney's Consolidated Laws of New York, Book 64, Part 2, page 287) provides as follows:

> The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, provided that awards according to the provisions of this chapter may be made by the board in respect of

injuries subject to the admiralty or other federal laws in case the claimant, the employer and the insurance carrier waive their admiralty or interstate commerce rights and remedies, and the state insurance fund or other insurance carrier may assume liability for the payment of such awards under this chapter.

Statement

The City of New York (Department of Sanitation) was the appellant's employer and self-insurer. The appellant, with the civil service title of Sanitation Man, was injured on September 20, 1959, while on a scow in Fresh Kills Creek, Staten Island. On December 21, 1959, he filed a claim for compensation with the Workmen's Compensation Board and retained his present counsel (or a predecessor firm of attorneys) to represent him before the Board. The retainer of such counsel was filed with the Board on August 3, 1960 (24, 25, 28, 41).*

Hearings on the claim for compensation were held before the Board's referees on April 1, 1960, June 17, 1960, December 16, 1960, March 17, 1961, October 27, 1961, December 1, 1961, February 16, 1962 and October 11, 1962. On the latter date the case was closed, claimant having worked continuously since January 29, 1962. He was represented by counsel at the hearings held on December 16, 1960 and October 11, 1962 (16, 31, 34, 37).

Compensation was awarded the claimant from time to time, aggregating $927. It is not disputed that the compen-

* Unless otherwise noted, figures in parentheses refer to pages of the transcript of the record.

sation awarded has been received by the claimant. Although the compensation covered intermittent periods between September 22, 1959 and January 29, 1962, it was not until the hearing held on October 11, 1962 that claimant's counsel questioned the authority of the Board to make awards of compensation to the claimant.

At the hearing before the Workmen's Compensation Board on March 27, 1963, claimant's counsel admitted that his client had accepted and retained the moneys awarded as compensation. The Board chairman stated (39):

> "We have no jurisdiction in maritime cases. But under Section 113 of our law, if the parties agree, we can accept and assume jurisdiction. I read that part of the chapter, the provision that the award—according to the provision of this chapter, the award may be made by the Board in respect of injury subject to the admiralty, or other federal laws. In this case, the claimant, the employer, and the insurance carrier waived their admiralty, and interstate clear rights and remedies."

The Appellate Division of the New York Supreme Court, Third Department, affirmed the decision of the Workmen's Compensation Board denying claimant's application to vacate the compensation awards. With respect to his contention that Workmen's Compensation Law §113 may not constitutionally be applied to maritime injuries sustained by seamen, the Court said (11):

> "Contrary to appellant's contention, the principles stated in *Meachem* [*Matter of Meachem* v. *New York Cent. R. R. Co.* (8 N Y 2d 293 [1960])] and in *Matter of Ahern* v. *South Buffalo Ry. Co.* (303 N. Y. 545, affd. 344 U. S. 367) are, in our view, applicable to this ac-

cident on a scow, and are not limited to waivers of liability arising out of cases which might otherwise be sued under the Federal Employers' Liability Act."

The New York Court of Appeals unanimously affirmed, without opinion.

ARGUMENT

The constitutional validity of Workmen's Compensation Law §113 was established by this Court in *South Buffalo R. Co.* v. *Ahern*, 344 U. S. 367. The sole question raised by this appeal—the constitutionality of the statute—is not a substantial constitutional question and the appeal should therefore be dismissed.

(1)

In *South Buffalo R. Co.* v. *Ahern*, 344 U. S. 367, the validity of Workmen's Compensation Law, §113 was challenged by an interstate carrier as being in unconstitutional conflict with the Federal Employers' Liability Act (45 U. S. C. §§51 *et seq.*). This Court sustained the constitutionality of the statute, holding that it did not conflict with the federal statute. The Court noted that §113 was merely "legislative authorization, *permitting* the Board to effectuate private agreements for compromising a federal controversy" (344 U. S., at p. 372).

The statute authorizes the Workmen's Compensation Board to make awards "in respect of injuries subject to the admiralty or other federal laws" where the parties waive "their admiralty or interstate rights and remedies."

The statute is permissive and not mandatory. "The difference between coercion and permission is decisive; New York's jurisdictional grant, so confined, does not transgress." (344 U. S., at p. 372.)

Appellant would restrict the principle of the *Ahern* case to employees engaged in interstate commerce and would deny its application to those engaged in maritime employment. This Court's opinion in *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147 (1917), effectively answers appellant's contention.

With the enactment by the Congress of the Federal Employers' Liability Act under the authority of the interstate commerce clause (Constitution, Art. I, Sec. 8, clauses 3 and 18) the entire field of injuries to railroad employees was completely pre-empted to the exclusion of State enactments in the same field. Among the enactments so interdicted are State workmen's compensation laws. Such was the holding of this Court in *New York Central R. R. Co.* v. *Winfield, supra*, 244 U. S. 147, which involved the New York Workmen's Compensation Law.

In holding that the *compulsory* provisions of the State statute could not constitutionally apply to interstate commerce employees, the Court stated that the Federal Act (FELA) is "comprehensive and also exclusive" (p. 151); it is "paramount and exclusive" (p. 152); where "the injury occurred while the carrier was engaged and the employee employed in interstate commerce the federal act governs to the exclusion of the state law" (*ibid.*).

In *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205 (1917), decided the same day as *Winfield*, this Court established the

supremacy of the maritime law, as fixed and determined by the Congress, to the exclusion of State statutes purporting to operate in that field. *Jensen* and *Winfield* are companion cases in that both excluded the New York Workmen's Compensation Law from jurisdiction, the one over seamen (*Jensen*) and the other over interstate railroad employees (*Winfield*).

In *Jensen*, this Court drew an analogy between the power of the States to legislate with respect to maritime matters and their power to legislate on matters affecting interstate commerce. The Court said (244 U. S., at pp. 216-217):

> "A similar rule in respect to interstate commerce deduced from the grant to Congress of power to regulate it is now fairly established. 'Where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, such as transportation between the States, including the importation of goods from one State into another, Congress can alone act upon it and provide the needed regulations' * * * And the same character of reasoning which supports this rule, we think, makes imperative the stated limitation upon the power of the States to interpose where maritime matters are involved."

The supremacy of federal law is as absolute and complete with respect to seamen as it is to interstate commerce employees. Appellant's position seems to be that the ouster of the States' jurisdiction is more complete in the case of seamen's injuries than it is in the case of injuries sustained by employees engaged in interstate commerce. But the exclusion of the States as to the latter is complete and unqualified. There are no degrees of exclusiveness of jurisdiction in either field.